

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA,

Case No. 5:22-cr-58

Plaintiff,

v.

SERHAT GUMRUKCU,

Defendant.

SERHAT GUMRUKCU'S MOTION TO LIMINE NO. 7:
MOTION FOR ORDER PRECLUDING ARGUMENTATIVE WITNESS TESTIMONY
THAT REPRESENTATIONS WERE "FRAUDULENT" AS OPPOSED TO FALSE,
INACCURATE, OR ANOTHER NON-ARGUMENTATIVE SYNONYM

Defendant Serhat Gumrukcu, by and through his attorneys of record, respectfully moves *in limine* for an Order precluding the Government's witnesses from declaring that representations he/she contends are inaccurate are in fact "fraudulent." Defendant Gumrukcu respectfully requests oral argument on this motion at the March 14 hearing at trial's commencement.

As Judge Fallon observed in a recent wire fraud trial, "fraudulent is really a legal issue. What a person knew, when they knew it, what they did, what they did about it is really what this witness can testify to. Whether it's fraud or not is really a legal question, and eventually you're going to have that decision to make." *United States v. Ryan, et al.*, 20 Cr. 65 (E.D. La), Dkt. 1179 (Day 5 trial transcript) at 10 (previously provided to the United States).

Judge Fallon was correct. "Fraudulent" is an argumentative term that declares to know the intent of the speaker, *viz.*, Merriam-Webster's defines it as "marked by, based on, or done by the use of dishonest methods to acquire something of value." See <https://www.merriam->

webster.com/thesaurus/fraudulent. Thus, while the Government may elicit from its witnesses that a statement or representation was untrue or inaccurate or false, “fraudulent” connotes far more than that: it presents the legal conclusion about the intent of the speaker.

The Court should not permit such an argumentative presentation through testimony. Rather, if the witness testifies that any particular statement was inaccurate or false, the Government may then seek to elicit facts about whether that statement was made “to acquire something of value,” and if so, how. But the Court should preclude the Government from using lay testimony to layer on the argumentative suggestion that any inaccurate statement was, in fact, “fraudulent.” That is a question for the jury to resolve.

Dated this 28th day of February 2025.

Respectfully submitted,

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